



**ASIC**

Australian Securities & Investments Commission

**[CO 02/272]**

**Secondary sale of securities: section 707(3)  
and section 707(4)**

*Issued 7/3/2002*

*Class Order [CO 02/272] provides conditional relief from disclosure requirements for offers for sale of securities under section 707(3) and section 707(4) of the Corporations Act 2001.*

***This class order comes into effect on 11 March 2002 upon commencement of Schedule 1 to the Financial Services Reform Act 2001: see paragraph 4(2A)(c) of the Acts Interpretation Act 1901.***

Australian Securities and Investments Commission  
Corporations Act 2001 — Subsection 741(1) — Declaration

Pursuant to subsection 741(1) of the *Corporations Act 2001* and with effect from the Commencement Date, the Australian Securities and Investments Commission (“ASIC”) hereby declares that until 11 September 2002 Chapter 6D applies to each person in the class of persons specified in Schedule A in the cases specified in Schedule B as if section 707 were modified or varied by omitting subsections 707(3) and (4) and substituting the following subsections:

“(3) An offer of a body's securities for sale within 12 months after their issue needs disclosure to investors under this Part if the body issued the securities:

- (a) without disclosure to investors under this Part; and
- (b) with the purpose of the person to whom they were issued:
  - (i) selling or transferring them; or
  - (ii) granting, issuing or transferring interests in, or options or warrants over, them;

and section 708 does not say otherwise.

**Note 1:** Section 706 normally requires disclosure for the issue of the securities. This subsection is intended to prevent avoidance of section 706. However, to establish a contravention of this subsection, the only purpose that needs to be shown is that referred to in paragraph (b)

**Note 2:** The issuer and the seller must both consent to the disclosure document (see section 720).

- (4) Unless the contrary is proved, a body is taken to issue securities with the purpose referred to in paragraph 3(b) if any of the securities are subsequently sold, or offered for sale, within 12 months after their issue.”

### **Schedule A – Persons to whom this declaration applies**

Any person (the “Seller”) who makes an offer of a body's securities for sale of the kind referred to in Schedule B.

### **Schedule B – Cases in which this declaration applies**

This Class Order applies only to an offer of securities of a body (the “Issuer”) for sale which has each of the following 4 characteristics:

1. The securities were issued on or after the Commencement Date.
2. The securities are not, and do not include, debentures.
3. The securities are covered by at least one of the Categories of Relief set out in Schedule C.
4. If the securities are covered by Category 4, 5 or 6 in Schedule C — a Reliance Notice was provided to ASIC by the Issuer within 5 business days after the issue of the securities.

### **Schedule C – Categories of relief**

#### ***Category 1***

The securities were issued without disclosure to investors under Part 6D.2 because the Issuer relied upon, and complied with any applicable conditions of, any one or more of ASIC Class Orders CO 00/194, 00/220, 00/223 or 02/264 or an individual instrument of relief granted by ASIC to the Issuer which provided relief from Part 6D.2 with respect to a share purchase plan or employee share scheme, or a like plan or scheme, in terms similar to one of those Class Orders.

***Category 2***

The securities were issued without disclosure to investors under Part 6D.2 because the Issuer relied upon subsections 708 (13), (17) or (18).

***Category 3***

- (1) The securities are in a class of securities that were quoted ED securities at all times in the 12 months before the date of issue; and
- (2) there is a completed contract for the issue of the securities; and
- (3) at the time of issue of the securities and at the time of the offer for sale no determination under subsection 713(6) is in force with respect to the Issuer; and
- (4) the securities were issued by reason of the conversion of options, convertible notes or convertible preference shares ("convertible securities"); and
- (5) those convertible securities were issued with disclosure to investors under Part 6D.2.

***Category 4***

- (1) The securities are in a class of securities that were quoted ED securities at all times in the 12 months before the date of issue; and
- (2) there is a completed contract for the issue of the securities; and
- (3) at the time of issue and at the time of the offer for sale no determination under subsection 713(6) is in force with respect to the Issuer; and
- (4) the Issuer is included in the ASX/S&P 200 index both at the time of the issue of the securities and at the time of the offer for sale; and
- (5) the Seller is not aware of any failure by the Issuer to comply with any undertaking contained in the Reliance Notice.

***Category 5***

- (1) The securities are in class of securities that were quoted ED securities at all times in the 12 months before the date of issue; and
- (2) there is a completed contract for the issue of the securities; and

- (3) at the time of issue and at the time of the offer for sale no determination under subsection 713(6) is in force with respect to the Issuer; and
- (4) all information of the kind that would be required to be disclosed under subsection 713(5) if a prospectus were to be issued in reliance on section 713 in relation to an offer of the securities is notified to the operator of the prescribed financial market on which the securities are quoted contemporaneously with, and in any event by no later than 2 days after, the time of issue; and
- (5) the offer for sale does not occur until after the notification referred to in (4) has occurred; and
- (6) the Seller is not aware of any failure by the Issuer to comply with any undertaking contained in the Reliance Notice.

**Category 6**

- (1) The securities are in a class of quoted securities of a body listed on the financial market operated by ASX; and
- (2) there is a completed contract for the issue of the securities; and
- (3) at the time of issue and at the time of the offer for sale no determination under subsection 713(6) is in force with respect to the Issuer; and
- (4) a prospectus complying with Part 6D.2 was issued in relation to securities of that class no more than 6 months prior to the offer for sale; and
- (5) the Seller is not aware of any failure by the Issuer to comply with any undertaking contained in the Reliance Notice.

**Interpretation**

In this instrument:

1. "ASX" means Australian Stock Exchange Limited;
2. "Commencement Date" means the date of commencement of Schedule 1 to the *Financial Services Reform Act 2001*;
3. "completed contract" means a contract where consideration for the issue of the securities has been fully paid;
4. "Reliance Notice" means a written notice headed "Notice of

Intended Reliance on ASIC Class Order [02/0272]” which:

- (a) specifies which of Categories 4, 5 or 6 the Issuer seeks to rely on with respect to an issue of securities that may be subject to a subsequent offer for sale;
  - (b) specifies the date of the issue of the securities;
  - (c) specifies the identity of the person to whom the securities were issued;
  - (d) specifies when the contract for issue of the securities was completed; and
  - (e) includes an irrevocable undertaking by the Issuer to provide ASIC with any other information known to the Issuer which ASIC requests in writing in relation to the issue of the securities within 5 business days of receipt of a written request from ASIC for that information; and
5. references to Chapters, Parts and sections are to Chapters, Parts and sections of the *Corporations Act 2001*.

Dated the 7th day of March 2002.

Signed by Brendan Byrne  
as delegate of the Australian Securities and Investments Commission